



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,997	08/16/2005	Ian David Worthington	Q85312	5134

23373 7590 10/17/2007
SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

DOUGLAS, STEVEN O

ART UNIT	PAPER NUMBER
----------	--------------

3771

MAIL DATE	DELIVERY MODE
-----------	---------------

10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,997

Applicant(s)

DAVID WORTHINGTON, IAN

Examiner

/Steven O. Douglas/

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 01052005.05232005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Art Unit: 3771

DETAILED ACTION

The disclosure is objected to because of the following informalities: Figures 1A and 1B are lacking brief descriptions.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 4, it is indefinite as to what is intended by “save for an optional thin layer of non-tacky.....” (lines 3 and 4).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-7 and 10 rejected under 35 U.S.C. 102(b) as being anticipated by EP’907 (EP 0 081 907 A1).

Art Unit: 3771

The EP'907 reference discloses a tracheostomy cannula mounting comprising a planar sheet (11,12) with an associated channel 20, wherein the sheet includes an adhesive layer that is comprised of tacky gel-type materials such as gum, etc..

In regard to claim 10, the method as claimed would be inherent during normal use and operation of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP'907 in view of Kaiser'237.

The EP'907 reference discloses an adhesive sheet (supra), but does not disclose a removable protective layer of non-tacky material. The Kaiser'237 reference discloses another adhesive sheet that utilizes a removable protective layer of non-tacky material 14 to protect the adhesive sheet prior to use. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a removable protective layer of non-tacky material with the EP'907 device in view of the teachings of the Kaiser'237 reference to protect the adhesive sheet prior to use.

Art Unit: 3771

Claims 1 and 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bridge'011 in view of EP'907.

The Bridge reference discloses a tracheostoma cannula device 160 (see Figure 9) with associated flange portion, but does not disclose use of a mounting. The EP'907 reference discloses another tracheostoma device (supra) that utilizes a mounting (supra) in order to provide an enhanced sealing interface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a mounting with the cannula device of Bridge in view of the teachings of the EP'907 to provide an enhanced sealing interface.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kalt, Worthley, Shesol and Deily et al. references pertain to tracheostoma devices with associated mounting structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner
Art Unit 3771

SD
10-12-07